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No. 469

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1929.

TEXAS AND NEW ORLEANS RAILROAD COMPANY, et al.,

Petitioners,

vs.

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, etc., et al.,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

With Appendix Containing Opinions of Lower Courts and Railway Labor Act.

DONALD R. RICHBERG,
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CARL G. STEARNS,
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TEXAS AND NEW ORLEANS RAILROAD COMPANY, et al.,

Petitioners,

vs.

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, etc., et al.,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

Instead of presenting such an extensive statement of the case as would be necessary to correct the numerous inaccuracies and omissions in the partisan statement of petitioners, we ask the court to read the impartial statement made by the Circuit Court of Appeals in its opinion, which is printed in the appendix to this brief. A more detailed review of the pertinent facts will be found in the four opinions of the District Court, likewise printed in the appendix.

We would merely point out that this proceeding began with a complaint in behalf of the clerical employees of the Texas & New Orleans Railroad Company that the officials

of said railroad were wrongfully preventing them from exercising their natural right (which is specifically confirmed by the Railway Labor Act of 1926) to select their own representatives to make contracts for them.

> "Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence or coercion exercised by either party over the self-organization or designation of representatives by the other."
>
> Sec. 2, Par. Third, Railway Labor Act, 1926.
> (*U. S. Code Title* 45, *Chap.* 8 *Sec.* 152.)

In violation of the foregoing statutory requirement and in defiance of a temporary injunction issued by the District Court, the officials of said railroad persisted in a course of unlawful conduct deliberately calculated to defraud its employees of valuable personal rights and property rights —described in detail in the opinions of the District Court, hereinafter printed. In its opinion of April 19, 1928 (see Opinion IV in Appendix, p. 40) the District Court pointed out that—

> "The genesis and motive of the entire activity of the defendants in organizing, promoting and maintaining the association [the company organized union] and in endeavoring to disrupt and unseat the Brotherhood [the employee organized union] as representatives, is made clear and plain through a letter written by Mr. Lull, one of the defendants in the contempt proceeding and Vice-President of the railroad company, to Mr. McDonald, its President, on May 24, 1927, prior to the activities complained of in this suit.
>
> That letter in brief declared that there was pending from the general committee of the national organization of the Brotherhood of Railway Clerks a request for an increase of 10 cents per hour; that it was practically certain, if the matter went to arbitration, an award would be rendered increasing the pay roll $340,000 per annum; that he proposed to refuse arbitration upon the

question of the right of the Brotherhood to represent the employees, and stated: 'This will permit us to get away from the interference of this organization, and if successful in this, I am satisfied we can make settlement with our own employees at a cost not to exceed $75,000 per annum.'"

(The words bracketed above are ours. The letter of Vice-President Lull is quoted in full in the opinion of the District Court, Appendix, p. 41.)

It seems to counsel for respondents that after the pertinent facts have been extracted from the voluminous record and clearly presented, as they have been in the opinions of courts below, the legal principles applied by these courts become too obvious and are too well established to call for supporting arguments or additional citations. Therefore we submit only the following statements of principles:

Summary of Argument.

1. It is in the interest of a free flow of interstate commerce to encourage the settlement of labor disputes by voluntary agreements—by the making of enforceable contracts.

(This is the purpose of Sec. 2, Par. First, Railway Labor Act, 1926.)

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

2. Contracts to be effective and enforceable must be made between duly authorized representatives of the contracting parties.

(This is the purpose of Sec. 2, Par. Second, Railway Labor Act, 1926.)

"Second. All disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute."

3. In order to prevent fraud in the making of contracts, it is proper to provide by law that one contracting party shall not interfere with the free selection of the representatives of the other party and it is proper to invoke the aid of a court of equity to prevent the consummation of a fraud through the exercise of influence or coercion by one contracting party over the representatives of the other party.

(This is the purpose of Sec. 2, Par. Third of the Railway Labor Act, 1926, (quoted above) and this legislative intent was upheld by the lower courts in the present case.)

4. Employes in contracting for wages and working conditions have the same rights as all other persons to select their own agents and to exercise unhampered control over the selection and actions of their representatives.

(There seems to be no reason why a court of equity should not give employes the same protections that are commonly given other complainants against fraud and coercion in the making of contracts.)

The public policy declared in the above quoted sections of the Railway Labor Act is carried out in the later sections of the Act by providing (1) for the holding of conferences and the negotiation of agreements between railroad employers and employes; (2) for the services of the United States Board of Mediation to aid the parties to reach agreements; (3) for the creation of legally authorized boards of arbitration whose awards are made enforceable by the Federal Courts, and (4) for the creation of emergency boards appointed by the President of the United

States to deal with unsettled controversies which threaten interruptions of interstate commerce.

While the Act does not give any government tribunal the power of compulsory arbitration, the Act does provide extensively for the enforcement of the contractual obligations of employers and employes and prohibits the termination and change of such obligations, except through the use of a machinery of conference and adjustment, which is intended to produce new contractual obligations. The power of the courts to enforce these contractual obligations is written into the Act specifically in some instances and by necessary implication in others.

The entire Act is printed as the last part of the Appendix, (p. 50). We call attention here to the following provisions:

Specific judicial power to—

(a) Enforce arbitration awards: Section 9, (also Sections 7and 8).
(b) Compel Testimony: Section 7.

Implied judicial power to—

(a) Prevent change of conditions while emergency Board is acting: Section 10.
(b) Prevent change of contracts without notice or during procedure provided in Act: Section 6.
(c) Enforce decisions of adjustment boards: Section 3.
(d) Enforce duties imposed and protect rights conferred: Section 2.

The language of the Act is not ambiguous. The evils to be remedied are notorious.

Pennsylvania Federation v. *Pennsylvania Railroad*, 267 U. S. 203.

In re Debs, 158 U. S. 564.

Wilson v. *New*, 243 U. S. 364.

American Steel Foundries v. *Tri-City Trades Council*, 257 U. S. 184, 209.

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

Therefore the Act can be construed in conformity with the purpose and legislative intent of Congress without utilizing any extraneous sources of interpretation.

Caminetti v. *United States*, 242 U. S. 470, 485.

United States v. *Stone & Downer Co.*, 274 U. S. 225, 239.

Duplex Printing Press Co. v. *Deering*, *supra*, at page 474.

Respondents are not adverse to submitting the issues of fact and law presented in this case to the exhaustive consideration and the final adjudication of the Supreme Court of the United States; and if the opinions of the Circuit Court of Appeals and of the District Court did not furnish in themselves their own justification and a complete answer to all the arguments advanced by the petitioner, we would hesitate to oppose a review of the case by the Supreme Court. We believe, however, that these opinions furnish a clearer and more convincing statement of the facts and law than we could present with the brevity appropriate for the present brief, and that they demonstrate that there is no occasion for the granting of the petition. Therefore, we have printed them as an appendix to this brief for the convenient consideration of the court, and we submit them as our statement of facts and argument.

Respectfully submitted,

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APPENDIX.

OPINION I.

Opinion of Circuit Court of Appeals, filed June 10, 1929. (Record pp. 1139-1146), Reported in 33 Fed. (2nd) 13.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

Texas & New Orleans Railroad Company, *et al.*,
Appellants,
versus
Brotherhood of Railway & Steamship Clerks, Etc., *et al.*,
Appellees.

Before WALKER, BRYAN and FOSTER, Circuit Judges.

WALKER, Circuit Judge:

The original bill in equity in this case was filed on July 25, 1927, by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana (herein referred to as The Brotherhood), a voluntary association consisting solely of railway clerks in the employ in the States of Texas and Louisiana of the Texas and New Orleans Railroad Company (herein called the Railroad Company), and H. W. Harper, in behalf of themselves and others of the class composed of railway clerks in the employ of the Railroad Company in the States of Texas and Louisiana,

against the Railroad Company and named officers and agents of it. By an amendment of the bill the Railroad Company became the sole party defendant. The bill contained allegations to the following effect: Since its organization in September, 1918, the Brotherhood has been authorized by a majority of the railway clerks in the employ of the Railroad Company to represent them in all matters relating to their employment, and that representation was recognized by the Railroad Company in dealings between it and such railway clerks before and after the beginning of a controversy as to wages between the Railroad Company and such clerks, following the application of such clerks, made in November, 1925, by the Brotherhood as their representative, for an increase of wages, and after the denial of that application by the Railroad Company, and the reference of that controversy by the Brotherhood to the United States Board of Mediation. While that controversy was pending before that Board, the Railroad Company undertook, instigated and encouraged the formation of a so-called "Company Union" of railway clerks in the employ of the Railroad Company, to be known as "the Association of Clerical Employees—Southern Pacific Lines" (herein called the Association), and through the Railroad Company's named general officers and agents having and exercising supervisory and directory powers over members of the Brotherhood endeavored in ways stated to influence, intimidate and coerce members of the Brotherhood to withdraw from it and to make the Association their representative in dealings with the Railroad Company in all matters relating to their employment, and by such means to prevent the railway clerks in the employ of the Railroad Company in Louisiana and Texas from freely, and without interference, influence or coercion, designating, by collective action, their representative in dealings with the Railroad Company in reference to their employment. Pursuant to

the prayer of the bill, and after a hearing following the issuance and service of a notice to show cause, the court, on August 3, 1927, issued a temporary injunction which ordered:

"That the defendant Texas and New Orleans Railroad Company (a corporation and common carrier owning, leasing, and operating certain railroads throughout the States of Texas and Louisiana), its officers, servants and agents are hereby enjoined and restrained from in any way or manner interfering with, influencing, intimidating, or coercing plaintiffs or any of the approximately seventeen hundred clerical employees (and being the clerical employees described and referred to in plaintiffs' petition, which includes approximately seventeen hundred railroad clerks in the employ of the defendant Railroad Company on its lines throughout the States of Texas and Louisiana, except such clerical employees as are employed and engaged in its general office in the City of Houston, Texas, and in its general office in the City of New Orleans, Louisiana), with respect to their free and untrammeled right of selecting or designating their representatives for the purpose of considering and deciding any and all disputes between said clerical employees and the defendant Railroad Company; and further enjoining and restraining said defendant Railroad Company, its officers, servants, and agents from in any way or manner interfering with, influencing, intimidating, or coercing plaintiffs or any of said clerical employees herein referred to of their free and untrammeled right of self-organization.

Nothing in this injunction shall be considered or construed as authority to prevent any employee of said defendant Railroad Company, in the class referred to, from organizing, joining, promoting, or fostering as many unions as he or they (meaning such employees in the class referred to) may desire, and in any way which he or they may desire, and with the assistance and aid of any of his fellow employees in any way and to any extent that said fellow employees (in the class referred to) may desire; nor shall anything in this injunction be considered or construed as authority or permission for any officer or agent of said company, or any em-

ployee, acting for or on behalf of the defendant Railroad Company, attempting to influence or to interfere with said selection or designation of their said representatives, or their right to self-organization as herein referred to, upon any pretext that they are acting individually and not as representatives of said defendant corporation."

In October, 1927, contempt proceedings were instituted by an information which charged sundry violations of the injunction by the Railroad Company acting through its authorized officials and agents. Evidence in support of the allegations of the information included evidence to the effect that after the injunction was issued the Railroad Company, acting through agents authorized by it, brought to bear upon clerks in its employ who were members of the Brotherhood or eligible to membership therein influence and pressure, including promises and threats, to induce such employees to renounce the Brotherhood as the representative of such clerks in dealings with their employer as to rates of pay, rules and working conditions, and to consent to the Association being the representative of such clerks in such dealings; permitted employees to devote their time and services to activities for the Association without deduction from their pay while they were so engaged, but docked the pay of employees who were members of the Brotherhood for time used in the service of the Brotherhood, deprived of passes employees who, while on leave of absence without pay, acted as officers of the Brotherhood, and dismissed from the service employees who acted for the Brotherhood, because they so acted; and formally recognized and dealt with the Association as the sole authorized representative of such clerks in dealings with the Railroad Company as to wages and working conditions. By an order made in that proceeding the court adjudged that the Railroad Company and named agents and employees of it were guilty of contempt, and imposed as conditions of the

purging of the contempt adjudged the cancellation of the recognition by the Railroad Company of the Association as the authorized representative of such clerks, the restoration to their positions of named discharged employees who were members of the Brotherhood, and the restoration of the pass privileges of which named members of the Brotherhood had been deprived. After the introduction of evidence by both parties the court rendered a decree perpetuating the above mentioned temporary injunction.

The following provision of Section 2 of the Railway Labor Act, approved May 20, 1926, 44 Stat. 577, being subdivision Third of that section, was invoked to support the asserted right to relief sought by the bill: "Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence or coercion exercised by either party over the self organization or designation of representatives by the other." For the appellants it was contended that to give to the quoted provision the effect of conferring on employees of a carrier a judicially enforceable right would be inconsistent with the decision in the case of *Pennsylvania, etc., Federation* v. *Pennsylvania Railroad Company*, 267 U. S. 203. In that case a trade union of employees of a carrier sought to enforce by mandatory injunction compliance with regulations of the United States Labor Board providing for such employees acting, in dealings with the carrier as to wages, conditions of employment, etc., through representatives of their own choice. The court recognized that under the statute governing the Labor Board it had the right to prescribe such regulations, but decided that under that statute such regulations were not legally binding on the carrier or its employees, or judicially enforceable at the instance of the latter. That case and the instant

one differ in that a question presented in the former was as to regulations of the Labor Board being judicially enforceable, while the latter presents the question whether a provision of an Act of Congress gives a right claimed, and, if so, whether a court can award redress for a violation of that right. By the quoted provision Congress conferred on employees of a carrier the right to select their representatives, for the purposes of the Act, by means of collective action, without interference, influence, or coercion exercised by the carrier over the self organization or designation of representatives by the employees, and imposed on the carrier the duty of refraining from exercising the forbidden interference, influence, or coercion. Though under the Railway Labor Act it is optional with carriers and their employees to agree or not to agree to use the means provided for by the Act for the settlement of disputes, it is not optional with either to violate rights conferred on the other by the Act. The provision in question indicates the unwillingness of Congress to provide machinery for the settlement of disputes between carriers and their employees by the voluntary action of the parties without at the same time providing for the representative acting for each party in agreeing to a prescribed method of settlement being one chosen by that party without interference, influence or coercion exercised by the other party. The violation of a duty created by statute, resulting in damage to one of the class for whose benefit the duty was imposed confers a right of action upon the injured person, though the statute makes no provision as to a remedy for such a wrong. *Marbury* v. *Madison*, 1 Cranch 137, 163; *De Lima* v. *Bidwell*, 182 U. S. 1, 176; 1 Corpus Juris 951. The language of the provision in question is inconsistent with the existence of intention to leave a carrier free to interfere, in the way charged in the bill, with collective action by members of a group of its employees in selecting their representative for purposes of the Act.

The provision in question was attacked on the ground that it was beyond the power of Congress to enact it. We think that under the power to regulate interstate commerce it is competent for Congress to make provision for the settlement of disputes between interstate carriers and their employees with reference to rates of wages, rules and working conditions, to the end of preventing such disputes resulting in the interruption or stopping of the movement in interstate commerce of freight or passengers. *Wilson* v. *New*, 243 U. S. 364. Certainly a not inappropriate feature of such a provision would be one having a tendency to secure to each of the parties to such a dispute, when an attempt to effect a settlement of the dispute is to be made, the opportunity of selecting a representative not subject to the domination or under influence of the other party, as a settlement could not reasonably be expected to be satisfactory to both the parties and the public where one of the parties to the dispute was not loyally or fairly represented in the transaction which resulted in the settlement. To say the least, we have not been convinced of the invalidity of the provision in question.

For the appellants it was contended that, though there was no adequate legal remedy for the redress of the wrongs charged by the bill, the issue of the injunction was forbidden by Section 20 of the Clayton Act, 29 U. S. C., Sec. 52, which provides that no restraining order or injunction shall be granted by any United States Court or a judge thereof in any case between employers and employees, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application. It may be assumed that that provision governs applications for injunctive relief by both employers and employees, though there is some ground for concluding that in enacting the provision Congress had

in mind applications for such relief by employers only. The term "property right" is broad enough to include the right to make contracts for the acquisition of property, by the rendition of services, or otherwise, and the right of an employee to money or other property exchanged, or to be exchanged, for his services. *Coppage* v. *Kansas*, 236 U. S. 1, 14. It hardly would be denied that injury to a property right of one would result from keeping him from realizing as much income from his occupation or business, though it consists in rendering personal services for compensation, as he could have earned if his freedom of acting and contracting had not been interfered with. We are of opinion that within the meaning of the provision now under consideration injury to property rights of members of a group of employees would result from conduct of their employer having the effect of such employees, in dealings between them and their employer with reference to terms and conditions of employment, having a representative subject to the domination or selfish influence of the employer, as a probable consequence of employees being so represented would be their failure to fare as well financially as they would have fared if they had been represented by a loyal agency intent on promoting their interests. The evidence adduced included a letter written by a vice-president of the Railroad Company to its president about two months prior to the date of the filing of the bill, which showed that the planning to get rid of the Brotherhood as the representative of the clerical employees in the pending dispute as to wages was because of the conviction or expectation that the Railroad Company by eliminating the Brotherhood from the situation would be enabled to effect a settlement of that dispute at a cost not to exceed $75,000 a year, while any settlement that could be expected to be brought about as a result of dealings with the Brotherhood would mean an increased clerical payroll of approximately $340,000 a year. In the circum-

stances attending the institution of the suit, one of those circumstances being a realization by the carrier that a settlement of the pending dispute as to wages could not be effected without some increase in the wages of its clerks, there was a substantial basis for the conclusion that members of the group of employees whose wages were in question had a property or financial interest in being afforded the opportunity of choosing a representative to act for them by collective action, without interference, influence or coercion exercised by the carrier. We conclude that the granting of an injunction in this case was not a violation of the statutory provision in question, and further that the allegations and proofs warranted the granting of injunctive relief.

The action of the court in the contempt proceedings in imposing conditions to the purging of the contempt found to have been committed did not go beyond requiring the undoing of what had been done in violation of the injunction. In dealing with the situation created by violations of the injunction it was permissible for the court to provide for the restoration of the status quo. *Texas, etc., R. R.* v. *Northside Ry.*, 276 U. S. 475.

We conclude that the record does not show that reversible error was committed. The decree is AFFIRMED.

FOSTER, C. J., dissenting:

In the last analysis the case here presented is an attempt by one labor union to prevent the organization of another labor union and to compel a railroad to negotiate with it as the sole representative of its clerical employees.

The organization of workers into unions and collective bargaining as to wages and working conditions has long been recognized by the courts as legal and by the public as desirable. The Railway Labor Act of 1926 i[illegible]erely

declaratory of public policy. It provides means for negotiation and arbitration but, unless arbitration is voluntarily entered into by mutual agreement, it contains no provision for compelling observance of its various sections.

However desirable it may be, in the interest of the public and the parties, that both a railroad and its employees proceed in good faith to settle their difference as to wages and working conditions in the manner pointed out by the act, either the railroad or its employees may refuse to be bound by the act and may decline to negotiate at all.

For a railroad to set up a company union, by persuasion or implied coercion, perhaps, and to then enter into an agreement with it, which may be considered merely an empty form, may be wrong and contrary to public opinion but to say that paragraph 3 of Sec. 2 of the Railway Labor Act gives a right of action to prevent such a course of conduct is going beyond the letter and intent of the law.

In my opinion the case here presented comes clearly under the ruling in *Pennsylvania Federation* v. *Pennsylvania Railroad*, 267 U. S. 203. I therefore respectfully

DISSENT.

OPINION II.

Opinion of District Court on granting temporary injunction, filed August 2, 1927. (Rec. pp. 76-82)—not reported.

"This is an application for temporary injunction brought by way of a class suit, H. W. Harper appearing as representative of the class, the class being members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees of the Southern Pacific Lines in Texas and Louisiana, and Railway and Steamship Clerks, Freight Handlers and so forth, individually, against the Texas & New Orleans Railway Company employing railroad clerks whom Harper and the Brotherhood purport to represent, and against such officers of the company named and certain individuals stated to be officers of the company, for an injunction to prevent the defendants, upon allegations that they should be prevented from interfering, influencing or coercing either the self organization or the designation of representatives by the railway and steam ship clerks, freight handlers and so forth, as provided in the Act of the 69th Congress entitled 'An Act to Provide for the Prompt Disposition of Disputes between the Carriers and their Employees, and for other purposes.'

"Whether Congress has the power, apart from a mediation Act, such as the one in question, to pass legislation affecting the right of an employer to freely influence or interfere with the organization, or lack of organization of his employees, is not the question before me. Neither is it the question whether the railway company might discharge the employee, or the employees refuse to work for the railroad company, merely because of questions of organization among the employees. The question here is simply whether under the Act passed for the purpose of

settling disputes between carriers and their employees (which Act parties to this litigation seem to have, as far as the record shows, acted upon and adopted), Congress can do what it has done to insure that in the settlement of these disputes each side shall be represented by those of its own selection, uninfluenced by the action of the other.

"In short Congress recognizing that a primary requisite of settlement of a dispute is the truly representative character of those who bring it about, has determined to, and I think has legally declared conditions under which these relations, if they are maintained, and these disputes, if they are adjusted, are to be adjusted.

"Nor do I think it doubtful that while no property rights, in the sense of a definite and tangible thing, is involved, that the right to work and to continue to work under arrangements which will insure fair wages and fair working conditions is a property right which Congress has the right to legislate about the preservation of, and a court has the power by appropriate order to protect.

This, as to the employees and the company, insofar as the bill may be construed as an attempt to enjoin individuals, acting as individuals, either of the class which the plaintiff claims to represent, or outside of that class, the Act does not attempt to, nor could it in my opinion, reach their action. In fact the Act clearly recognizes that employees should have the right to organize in the manner that they please, so long as they are not influenced or coerced by their employer, and the employer may select his representatives as he pleases without influence and coercion.

"Insofar, therefore, as the bill seeks, or might have the effect to strike at the mere organization or formation of the Association or other Union, the description of which, and the activity of which, are largely set out in the bill,

certainly the bill cannot reach this, nor can, or should, the court enjoin the activities of the men in forming, fostering and promoting this Union. Whether the Union is, or is not, favored by the corporation, nothing in the Act either looks to, or attempts to control the question of maintaining one Union as against the other in the interest either of the company or against the company.

"Insofar then as the bill by naming Ehlinger, McDaniel and Derrington seeks to enjoin these men from their activities as organizers of or sponsors or promoters of another union it states no cause of action against them. They have the right, if, as upon the affidavits I take it they are, they are clerks and are entitled to organize and maintain a union. Of course, if these men are company officials, if it should be later determined that they are not persons who have any right to organize or promote unions, and it should plainly appear that their connection with the union is merely specious and plausible, and not real and sound then a different rule would result, but as to those persons named in the bill as defendants and any other persons who are employed by the railroad in the capacity of railroad or steamship clerk, freight handler, express or station employee, who desire to, or are endeavoring to, organize a union, they have a full and complete right to do it as the plaintiffs have to maintain, organize and promote theirs. The prayer of the bill as to these men will be denied.

"Similar in form, but not the same in substance, the prayer of the bill as to the persons named O'Donnell and others will be denied because personally the Act gives the court no jurisdiction over them and their activities as individuals disassociated from their positions as officers, are not the subject of court review. In substance, however, the injunction which the court has concluded to grant against the railroad will in its terms and operation cover them, because it seems to me that in this character of Act

the principles of apparent authority are to apply as well as those of express authority, and since in ordinary cases of responsibility sought to be imposed upon a principal through the act of an agent, the principal cannot be heard to deny the authority of the agent where he has clothed him with the indicia of authority and has held him out as having the authority by the same species of estoppel applicable to hold the principal there, the principal should be held here. It would be sticking in the bark to say that these men can so disassociate themselves from the company with which they work in their relations with their employees as to actively foment, foster, interfere or influence the formation of a union and be acting individually when they are doing it on the company's time, on the company's pay, and under the aegis of the company's authority, whether the authority to form the union is actually extended to them or not. So that it is not necessary in the view I take of the matter to at all find that "the officials" of the company are directly authorizing or encouraging these subordinate officials, and when I say "the officials," I mean the primary officials, in doing what they do.

"It is sufficient that they are clothed with the apparent authority and acting in the course of the company's business, and apparently in its interest, and this is strengthened by the position of the company before the court in this hearing, that it is interested in this association, it is too close a refinement to say that a court ought to be put to it to figure out whether these employees so acting, are actually authorized, when as a matter of fact the same result is accomplished by their being permitted to do it and their actions in the doing of it ratified. So that I think it clear from the position of the defendant itself, and particularly clear upon the affidavits which have to do with the holding out of the $75,000.00, and the affidavits which have to do with Arm-

strong's actions, but apart from that, from the general position of Mr. Torian's affidavit that these officers will continue to do this thing unless enjoined, that it is plain that in the sense which the statute sought to avoid the mischief is taking place, and that the company is, to what extent I am not now passing upon, but to some extent interfering with or influencing the self-organization of these employees.

"As to the designation of a representative by the employees, I do not think there is any proof that they are undertaking to do so.

Something was said in the bill about the company not permitting the representatives of the Brotherhood to appear in the mediation or to represent the clerks, and that the company was going to permit only persons from this other union. There is no proof of that before me as to what has been done about the designation of representatives, but I think the proof is sufficient to show that there has been enough activity of company officers, whether upon real or apparent authority is immaterial, to bring about a condition of company influence on self organization within the provisions of the Act.

"As to the prayer of the petition, which seeks to enjoin the railroad company from abridging or violating the contract of employment, I have no evidence before me, either of a contract of employment with the plaintiffs as a class, which is sought to be violated, or which is about to be violated or any evidence that anybody is about to violate it. So that it become academic, and not necessary to pass upon it at this time but I am inclined to think that except as an incident of or an illustration, or example of interference, influence or coercion, it has no part in this bill anyway, and I will not issue an injunction upon that phase of the bill.

There being no evidence at all that any discrimination is made in the employment or retention of any of these people because of membership.

"Then, the third prayer of the bill is to restrain the defendants from using or attempting to use any purported right or authority to appear for or act for, or represent the 1,700 clerical employees. I do not understand there is any evidence that the defendant is trying to do that. If there is, I will later enjoin them from it.

"For the present I don't think that is acute, and I don't think it is necessary. I think that the injunction ought to go as a result of what I have said, I think there is sufficient evidence to justify the court in the belief that activities have been had on the part of some of the officials of the railroad company which have the effect of interfering with, or influencing self-organization, and that a temporary injunction should be granted until the further orders of this court enjoining and restraining the defendant railway company, its servants and agents, from in any way or manner interfering with, influencing, intimidating or coercing plaintiffs or any of the employees represented by plaintiffs as a class, with respect to their own free and untrammelled right of selecting or designating their representatives for the purpose of considering and deciding disputes between the employees and the defendant railroad company, and as employees to their free and untrammelled right to self-organization. Nothing in this injunction shall be considered authority to prevent any employee of the railroad in the class referred to from organizing as many unions as he wants to in any way he wants to, with the assistance of and aid of his fellow employees in any way and to any extent that he wants to, nor on the other hand to permit the officer of the company from, while such officers, attempting to influence or interfere with such formation upon the pretext that they are acting individually and not as company representatives."

OPINION III.

Opinion of District Court holding Defendants (Petitioners) in contempt, filed February 6, 1928 (Record pp. 237-262), reported in 24 Fed. (2d) 426.

"This is a contempt proceeding, brought against the Texas and New Orleans Railroad Company and certain of its officials, upon information that they have violated a temporary injunction issued by this court on August 3, 1927, restraining the defendant, its servants and agents, from violating the third paragraph of Section 2 of the Railway Labor Act (44 Stat. 577 [45 U. S. C. A., Sec. 152]). That section provides:

" 'Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization, or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.'

"The terms of the injunction, entered after a full hearing, followed closely the language of the Act. At that hearing the company did not assert the invalidity of the Act. It merely denied that it had infringed it.[1]

"At this hearing, however, the defendants, while defending mainly on the ground that they had not violated the

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[1] Its counsel said: "If it should appear that the corporation is coercing its employees, I would not be disposed seriously to contest that the court would have a right to enjoin it under the terms of the United States Labor Board Act of May 20, 1926."

The court in its opinion said: "That question simply here is whether, under the Act passed for the purpose of settling disputes between carriers and their employees, which Act parties to this litigation seem to have, as far as the record shows, acted upon and adopted, Congress can do what it has done to insure that in the settlement of these disputes each side shall be represented by those of its own selection, uninfluenced by the action of the other. In short, Congress, recognizing that a primary requisite of the settlement of a dispute is the truly representative character of those who bring it about, has determined, and I think has legally declared, conditions under which these relations, if they are maintained, and these disputes, if they are adjusted, are to be adjusted."

order, also raised by suggestion the question of the power of Congress to so legislate, citing *Coppage* v. *Kansas*, 236 U. S. 1, 35 S. Ct. 240, 59 L. Ed. 441, L. R. A. 1915C, 960, and *Adair* v. *United States*, 208 U. S. 161, 28 S. Ct. 277, 52 L. Ed. 436, 13 Ann. Cas. 764.

"[1, 2] It is fundamental that 'a person proceeded against' in a contempt case 'for disobeying an injunction can never set up as a defense that the court erred in issuing it. * * * Errors must be corrected by appeal, and not by disobedience.' *Brougham* v. *Oceanic Steam Navigation Co.* (C. C. A.), 205 F. 857. And 'that a respondent in a contempt case may question the order which he is charged with refusing to obey only in so far as he can show it to be absolutely void.' 6 R. C. L. 505; *O'Brien* v. *People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219, 3 Ann. Cas. 966; *People* v. *McWeeney*, 259 Ill. 161, 102 N. E. 233, Ann. Cas. 1916B, 36; *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U. S. 399, 43 S. Ct. 458, 67 L. Ed. 719; *Barnes* v. *Chicago*, 232 Ill. 403, 83 N. E. 932, 14 L. R. A. (N. S.) 1150, 122 Ann. St. Rep. 129.

"In view, however, of the long-continued, persistent, and at times bitterly rancorous assertion that noncontractual relations of employer and employee do not present justiciable matters, that injunctions in labor disputes are political and not judicial, and that a proceeding of this kind is not the exercise of judicial power, but merely an essay in usurped and tyrannical 'government by injunction,' it seems desirable to here briefly set down the reasons which support the conclusions of the preliminary opinion that Congress had full authority to make justiciable a controversy of this kind.[3]

[3] "Speaking generally, it may be observed that the judicial power of a nation extends to all controversies justiciable in their nature, the parties to which or the property involved in which may be reached by judicial process, and when the judicial power of the United States was vested in the Supreme and other courts, all the judicial power which the nation was capable of exercising was vested in those tribunals, and unless there be some limitations expressed in the Constitution, it must be held to embrace all controversies of a justiciable nature arising within the territorial limits of the nation, no matter who may be the parties thereto." Kansas v. Colorado, 206 U. S. 83, 27 S. Ct. 641, 51 L. Ed. 956.

"For the purpose of this opinion it may be roughly stated that all justiciable matters are made so by law derived from two sources, that ascertained and declared by the judges as founded in and springing from the customs of the people, and that enacted by the legislatures; or, again roughly, common law and statutory law. Statutory law may be either declaratory or in derogation of the common law. In the former case, it makes more clear or gives more sanction to established customs. In the latter, while it may in rare cases run counter to established custom, it usually is declaratory of customs which, though existent as such, have not yet become established as law, so as to make actions in defiance of them justiciable.

"Customs, then, being the basis and spring of the law, changing as they must with changed conditions, judges and legislatures from time to time, in declaring the law, will make innovations upon it, and new adaptations of it to conform to these changes; and so slowly through judicial decisions and often with great rapidity through legislative action, the law modifies and grows, and, growing, lives.

"Innovations in the case of judge-made law, the growth of new categories for justiciable matters, again roughly come by two processes: First, the slow interstitial process referred to by Mr. Justice Holmes;[3] and, second, the more rapid one of disapproving and overruling principles, either erroneous when announced, or become erroneous through changing customs, referred to by Mr. Justice Brandeis.[4]

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[3] "I recognise without hesitation that judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions. A common law judge could not say: I think the doctrine of consideration a bit of historical nonsense, and shall not enforce it in my court. No more could a judge exercising the limited jurisdiction of admiralty say: I think well of the common law rules of master and servant, and propose to introduce them here en bloc." Southern Pacific v. Jensen, 244 U. S. 221, 37 S. Ct. 531, 61 L. Ed. 1086, L. R. A. 1918C, 451, Ann. Cas. 1917E, 900.

[4] "Such limitation of principles previously announced, and such express disapproval of dicta, are often necessary. It is an unavoidable incident of the search by courts of last resort for the true rule. The

"It has been said that decisions go by established categories, and that if, for a particular state of facts, no existing legal category may be found, the matter is not justiciable. Such statement, when taken in the light of the history of the law and in recognition of the indubitable fact that the living principle of modification and growth inheres in it, is sound, for legal categories are in this meaning constantly rearranging themselves to admit the newly established customs, which through their articulation by courts and legislatures have become law.

"Such being the origins of the law, it is plain that, in the absence of some limitation upon it, whatever a particular court or legislature might think to be the custom could be declared to be the law, and laws might change with uncomfortable rapidity. Against this danger two stabilizing influences, maintaining equilibrium and preserving old customs until outgrown, are constantly opposed. In the courts, it is that of stare decisis; in the legislatures, it is that of the Fifth and Fourteenth Amendments, which so operate. These amendments, providing as they do for the preservation of due process—that is, established custom—prevent arbitrary and unreasonable departures from established law, and are constantly being invoked in judicial controversies, where it is maintained that statutes, national and state, have sought to make justiciable matters which by reason of their prohibitions cannot be made so.

"One school of thinkers has maintained, and for a while with apparent success, that the custom guaranteed by these

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process of inclusion and exclusion, so often applied in developing a rule, cannot end with its first enunciation. The rule as announced must be deemed tentative. For the many and varying facts to which it will be applied cannot be foreseen. Modification implies growth. It is the life of the law. If the court is of opinion that this Act of Congress is in necessary conflict with its recent decisions, those cases should be frankly overruled." Washington v. Dawson, 264 U. S. 219, 44 S. Ct. 302, 68 L. Ed. 646.

"Stare decisis is ordinarily a wise rule of action. But it is not a universal, inexorable command. The instances in which the court has disregarded its admonition are many." Id. 264 U. S. 238, 44 S. Ct. 309, 68 L. Ed. 646.

amendments is fixed and static, and not subject, like other phases of the law, to change and growth.[5] Another school, declaring that a true decision depends as well upon induction as upon deduction, has declared, in the language of Mr. Justice Holmes: 'The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics.' *Lochner v. New York*, 198 U. S. 75, 25 S. Ct. 546, 49 L. Ed. 937, 3 Ann. Cas. 1133.[6]

"While in *Euclid Valley* v. *Ambler*, 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303, Mr. Justice Sutherland, for the court, declares: 'Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. * * * And in this there is no inconsistency, for, while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are possibly coming within the field of

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[5] The Business of the Supreme Court, Frankfurter and Landis, c. 8, 307 to 313.

[6] "General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. * * * Every opinion tends to become a law. I think that the word 'liberty,' in the Fourteenth Amendment, is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law." Lochner v. New York, 198 U. S. 76, 25 S. Ct. 547, 49 L. Ed. 937, 3 Ann. Cas. 1137.

"It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation, as well as expressions of opinion from other than judicial sources. * * * Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking. At the same time, when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge." Muller v. Oregon, 208 U. S. 419, 28 S. Ct. 325, 52 L. Ed. 551, 13 Ann. Cas. 957.

their operation. In a changing world, it is impossible that it should be otherwise.'[1]

"When, therefore, on either side of a dispute between an employer engaged in interstate commerce, a recognized subject of federal legislation, and its employees, one asserts, in the face of a statute which puts conditions upon its exercise, that that particular form of liberty, the liberty of contract, the right of the employer to hire and fire, and of the employee to serve or quit, in the absence of contract (the most stubbornly asserted of all the particular liberties), is unrestrainable, he must be prepared, not only to give learned dissertations on the freedom of contract, but to show in the light of established practices employed in the course of this long controversy, and of the judicial and legislative pronouncements on it, that it has not behind it a sufficient force of general public opinion to create an established custom which may be articulated into law.

"If in a study of the matter, a student of the law, employing in his research induction and deduction, should upon examination find that rising at first slowly, and then, through the full realization of a common plight, a common cause and a common remedy (the achievement of group solidarity and power through unionization), rushing on tides of feeling, the demand for collective bargaining became a passion with workingmen, and that, begun more than a half century ago, this demand has been asserted and opposed with equal fierceness, and at the cost not only of the blood and treasure of the combatants, but of disturbances of the

[1] "The truth seems to me to be that, subject to compensation when compensation is due, the legislature may forbid or restrict any business when it has a sufficient force of public opinion behind it. Lotteries were thought useful adjuncts of the state a century or so ago; now they are believed to be immoral and they have been stopped. Wine has been thought good for man from the time of the Apostles until recent years. But when public opinion changed it did not need the Eighteenth Amendment, notwithstanding the Fourteenth, to enable a state to say that the business should end." Tyson & Bro. v. Banton, 273 U. S. 446, 47 S. Ct. 434, 71 L. Ed. 718.

public peace and prosperity, and that for the greater part of this time this asserted right of collective bargaining has been enjoyed, he would be an ignorant man indeed who would not at once conclude that such a pregnant struggle could not have been so long waged without giving birth to customs, both capable of and in the interest of the public peace, requiring judicature.

"He would not have been surprised to find the history of the origin, growth, and change of such customs replete with legislative and judicial pronouncements. He would find that, beginning more than 40 years ago, six times has Congress legislated directly upon the subject;[8] that in cases without number the courts have issued their injunctions declaring and vindicating judicial power to protect the commerce of the country from the anarchy and disruption arising out of these fierce labor disputes.[9]

"He would find that in *Adair* v. *U. S.*, 208 U. S. 167, 28 S. Ct. 277, 52 L. Ed. 436, 13 Ann. Cas. 764, a majority of the Supreme Court of the United States had not been able to see that the custom of balancing the concentrated power of the employer, on the one hand, by the concentrated power of the employee, on the other, in negotiating wage and working agreements, which custom the Congress sought in the interest of the preservation of the even flow of commerce and the public peace to bring out of the field of mere custom into

[8]Act Oct. 1, 1888 (25 Stat. 501), creating a board or commission for settling controversies and differences between railroads and other common carriers engaged in interstate commerce and their employees; the Erdman Act of June 1, 1898 (30 Stat. 424), nullified in part in Adair v. U. S., 208 U. S. 167, 28 S. Ct. 277, 52 L. Ed. 436, 13 Ann. Cas. 764; the Act of July 15, 1918 (38 Stat. 103) for the arbitration of disputes between carriers engaged in interstate commerce and their employees; the Act of September 3, 5, 1916, the Adamson Act (Comp. St. §§ 8680a-8680d); Act Feb. 28, 1920, Railway Labor Board Act (41 Stat. 469); the Railway Labor Act of May 20, 1926 (44 Stat. 577 [45 U. S. C. A. §§ 151 to 163]).

[9]Arising out of the stress and strain of the conflict of 1894, resulting in the disruption of commerce bordering on civil war, came In re Debs, 158 U. S. 564, 15 S. Ct. 900, 39 L. Ed. 1092, in which, in ringing words, the Supreme Court declared the power of the courts to protect the commerce of the country without resort to arms.

that of law, had so established itself as to become justiciable. But he would also find that others of the judges, dissenting, could not see how the 'liberty through sheer antipathy' to bring on a struggle which would disrupt commerce could be paramount to public interest and he could but wonder at least if this were not so.[10]

"So wondering, he would not be surprised to find that, when, through the assertion of 'liberty exercised in sheer antipathy,' the United States, for want of compulsory arbitral measures, was stood up and forced to deliver, and Congress, responding to the crisis on September 3, 1916, enacted the Adamson Act, fixing the eight-hour standard, the Supreme Court of the United States, in an opinion unanswerable in its logic and noble in its assertion of power, settled for all time the full power of the Congress, either directly or by instrumentalities provided by it for compulsory arbitration, to settle disputes to prevent strikes and the disruption of commerce.[11]

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[10]Justice McKenna, after declaring that the facts of history should not be overlooked, nor the course of legislation, said:

"How can controversies, which may seriously interrupt or threaten to interrupt the business of carriers * * * be averted or composed, if the carrier can bring on the conflict or prevent its amicable settlement by the exercise of mere whim and caprice? I say mere whim or caprice, for this is the liberty which is attempted to be vindicated as the constitutional right of the carriers. * * * Liberty is an attractive theme, but the liberty which is exercised in sheer antipathy does not plead strongly for recognition." Adair v. United States, 208 U. S. 186, 28 S. Ct. 285, 52 L. Ed. 436, 13 Ann. Cas. 764.

"What did Congress mean? Had it no purpose? Was it moved by no cause? Was its legislation mere wantonness and an aimless meddling with the commerce of the country? These questions may find their answers in In re Debs, 158 U. S. 564 [15 S. Ct. 900, 39 L. Ed. 1092]." Id., page 187 [28 S. Ct. 285].

"A provision of law which will prevent or tend to prevent the stoppage of every wheel in every car of an entire railroad system certainly has as direct influence on interstate commerce as the way in which one car may be coupled to another, or the rule of liability for personal injuries to an employee." Id., page 189 [28 S. Ct. 286].

[11]"We are of opinion that the reasons stated conclusively established that, from the point of view of inherent power, the Act which is before us was clearly within the legislative power of Congress to adopt, and that in substance and effect it amounted to an exertion of its authority, under the circumstances disclosed, to compulsorily arbitrate the dispute between the parties by establishing as to the subject-matter of that

"Following after and founded upon these pronouncements, establishing the justiciable character of controversies between employer and employed which tend to interrupt and affect commerce, custom, legislation, and judicial decision not only furnish the precedent for the principle of the Act, but disclose the very mischief which the Act was designed to prevent, and provide for it the very language in which its direction is couched.

"And first came the war, with railroads under federal control centered in Washington; the centralization of control in the United States as employer, matched by centralization of control in powerful labor organizations as employees, with resulting national agreements governing wages and working conditions. This condition made inevitable the passage by Congress in 1920 of the Railway Labor Board Act for the settling of disputes between railroads

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dispute a legislative standard of wages operative and binding as a matter of law upon the parties—a power none the less efficaciously exerted because exercised by direct legislative act, instead of by the enactment of other and appropriate means providing for the bringing about of such result. If it be conceded that the power to enact the statute was in effect the exercise of the right to fix wages where by reason of the dispute there had been a failure to fix by agreement, it would simply serve to show the nature and character of the regulation essential to protect the public right and safeguard the movement of interstate commerce, not involving any denial of the authority to adopt it." Wilson v. New, 243 U. S. 351, 37 S. Ct. 303, 61 L. Ed. 755, L. R. A. 1917E, 938, Ann. Cas. 1918A, 1024.

"The capacity to exercise the private right free from legislative interference affords no ground for saying that legislative power does not exist to protect the public interest from the injury resulting from a failure to exercise the private right." Id., page 353 [37 S. Ct. 304].

We are "of the opinion that Congress had the power to adopt the Act in question, whether it be viewed as a direct fixing of wages to meet the absence of a standard on that subject resulting from the dispute between the parties, or as the exertion by Congress of the power which it undoubtedly possessed to provide by appropriate legislation for compulsory arbitration." Id., page 359 [37 S. Ct. 306].

In his dissent Mr. Justice McReynolds said: "Considering the doctrine now affirmed by a majority of the court as established, it follows as of course that Congress has power to fix a maximum as well as a minimum wage for trainmen, to require compulsory arbitration of labor disputes which may seriously and directly jeopardize the movement of interstate traffic, and to take measures effectively to protect the free flow of such commerce against any combination, whether of operatives, owners, or strangers." Id., page 388 [37 S. Ct. 314].

and their employees, which it was foreseen would arise in the unscrambling process required in the return to private operation. The board established rules and made decisions in many labor disputes.

"In its Decision No. 119 it laid down 16 principles, of which 2 are applicable here.[12] In Decision No. 218, wherein the Pennsylvania Railroad was seeking to control the designation of representatives the Board sharply denied this right.[13] Decision No. 220 involved a contention of that railroad that individuals, and not labor organizations, should be designated as representatives. This contention was denied.[14]

"Dissatisfied with these rulings, the Pennsylvania Railroad appealed from them, attacking both the constitutionality of the Act creating the board and the correctness of its decisions. On both points the board was sustained.[15]

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[12] "The right of employees to be consulted prior to a decision of the management adversely affecting their wages or working conditions shall be agreed to by management. This right of participation shall be deemed adequately complied with if and when the representatives of a majority of the employees of each of the several classes directly affected shall have conferred with the management."

"The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice."

[13] "The carrier had no more right to undertake to assume control of the selection of the representatives of the employees than the employees would have had to supervise the naming of the representatives of the carrier, for the statute plainly provides that the employees shall designate and authorize their representatives. In this sophisticated land of popular elections, no political party would submit to having its primary held and managed by the opposing party."

[14] "The statute recognizes the existence of organizations of railway employees, and the right of the men to belong to such organizations is no longer seriously questioned in any quarter * * * It is unjust and unreasonable to seek by methods, direct or indirect, to deprive them of the efficient representation afforded by these organizations, provided, of course, a majority of them desire to be so represented."

[15] "It is said that the Federation is a labor union affiliated with the American Federation of Labor, and that the phrase 'organization of employees,' used in the Act, was not intended by Congress to include labor unions. We find nothing in the Act to impose any such limitation, if the organization in other respects fulfills the description of the Act.

"In the course of the opinion the Chief Justice gives expression to the thought which informs as to the prime purpose of the section of the Act under discussion here, saying: 'Again, we think that this question of who may be representatives of employees, not only before the board, but in the conferences and elsewhere, is and always has been one of the most important of the rules and working conditions in the operation of a railroad.' *Pa. R. R.* v. *Labor Board,* 261 U. S. 83, 43 S. Ct. 282, 67 L. Ed. 536.

"It is not at all surprising, then, that when the Labor Board was abolished by the Railway Labor Act of May 20, 1926, in the third clause here under discussion, Congress, in the light of the experience of the past, has embodied the principle of natural justice that representatives of employees, in order to prevent disputes, which was the declared purpose of the Act, should be truly representative. [3, 4] Nor can there longer be any doubt that Congress had the power to, and that it must, in the interest of public peace and safety, make certain, in the first step in negotiations between the railroad employer and employee (who have long since come to be recognized, as to this instrument of interstate commerce in their hands, not as private persons having the right to exercise 'liberty through sheer antipathy,' but as trustees of the public), that representatives of the railroad companies should not meet representatives of the employees, nominally elected by them, but in fact under the influence and control of the railroad companies. I therefore easily find that the legislation in question was not only within the power of Congress to enact, but that it should be liberally construed and applied, so as

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Congress has frequently recognized the legality of labor unions (United Mine Workers v. Coronado Coal Co., 259 U. S. 344 [42 S. Ct. 570, 66 L. Ed. 975, 27 A. L. R. 762]), and no reason suggests itself why such an association, if its membership is properly inclusive, may not be regarded as among the organizations of employees referred to in this legislation." Pennsylvania R. Co. v. Labor Board, 261 U. S. 72, 43 S. Ct. 278, 67 L. Ed. 536.

to give effect to the paramount public convenience subserved by it.

"[5] Nor do I think it more debatable that both the letter and the spirit of the statute and of the injunction have been violated. While it is hard to believe that a railroad and its officials would deliberately seek to set at naught both the legislative and the judicial power of the United States, it is difficult to avoid the conclusion that the violation of the statute and of the injunction which followed its violation, was the result of a strong and settled purpose to defy both, and that that spirit of heady violence to obtain its ends, which has so often exhibited itself in these labor disputes, in the conduct of employees when the injunction was the other way, is not absent here.

"Nor is it possible to reconcile the claim of the defendant railroad, that it is not seeking to influence or interfere in the selection of representatives, with the record made in this case of motives, purpose, and activity. This is no new devising. It must be borne in mind that this is old straw twice unsuccessfully threshed out before the Labor Board, to oust from the position of representation, obtained during federal control, this Brotherhood.[16]

"This present flare-up had its seat in that old fire, and there is about its present fierce and steady flame an appearance of purpose and of resolution firmly conceived to again assert the liberty of 'mere whim or caprice,' that 'liberty which is exercised in sheer antipathy, and which therefore does not plead strongly for recognition,' which is wholly

[16] On November 14, 1923, after the Brotherhood had been twice sustained as against the Association of Clerical Employees, the defendant Torian, for the company, wrote Harper as follows:

"November 14, 1923.

"At conference yesterday, I advised that the carrier would comply with Decision 1971 of the United States Labor Board, and recognize the organization of the Brotherhood of Railway and Steamship Clerks until such time as the majority of the clerical employees, by secret ballot, select other representation."

inconsistent with the claim of the defendant of neutrality between these rival Associations here put forth.[17]

"Many affidavits were submitted on the hearing for the injunction which abundantly established that the activity of the officers and agents of the railroad company in securing authorizations was inspired by the company, while the record teems with evidence that the Association was the favored child of the defendant company, and, if not created, was largely sponsored, promoted, and maintained by it. The evidences of activity in violation of the statute, and of the injunction occurring since, are more numerous, cogent, and powerful.

"Not only did the railroad company, with a sheer and gratuitous wantonness of spirit, reject the offices of the Board of Mediation, created and operating under this same Act, before whom, at the time of the filing of this suit, a wage dispute initiated by the Brotherhood was pending,[18]

[17]In Torian's affidavit, filing in this cause on July 29, 1927, it is stated: "Said Texas & New Orleans Railroad Company has never recognized the Brotherhood as the representative of its clerical employees, save and except as required to do so by decisions of the United States Railroad Labor Board, and it is not, and has never been, the purpose or intent of the said railroad company or its predecessors in the ownership or control of the properties now operated by the railroad company, to recognize or deal with said Brotherhood, except as required to do so by the decisions aforesaid. The Brotherhood has at all times been extremely radical in its attitude, and has made and presented many unreasonable demands on the railroad company, and while its officers have conducted themselves, and still conduct themselves, as acutely hostile to the interests of the railroad company, the railroad company has not undertaken to cause the formation of the Association, and has never interfered with, influenced, or coerced, or attempted to interfere with, influence, or coerce, the clerical employees with respect to membership in either the Brotherhood or the Association. Many of the officers and employees of the railroad company, and particularly the officers and employees the work of whose departments or stations is most directly affected by loyalty, industry, and interest in the welfare of the company on the part of clerical employees, have a strong interest in the selection by said employees of an organization to represent them which will endeavor to co-operate with their employer, and to deserve, rather than demand without deserving, favorable action in the matter of wages and working conditions."

[18]G. S. Waid, by telegram of August 2, requested the Board of Mediation to relinquish jurisdiction. This request, by telegram of August 4, the board declined, and on August 4 Waid telegraphed the board as follows: "Brotherhood of Railway and Steamship Clerks does not rep-

but before the ink was hardly dry upon the order of injunction proceeded to nullify it by recognizing as truly representative the Association, all of whose authorizations had been filed with the defendant Torian before this suit was filed, and the most of which had been obtained, as found by the court, by the use of means in violation of the statute. And this recognition was accorded, and action taken under it, in the face of the statute,[19] and of Torian's affidavit filed herein, that he would not consider these authorizations until the board had so relinquished.[20]

"While, with a fell and steady purpose, by striking at the heads of the Brotherhood and of those who were active in it, by depriving them of their positions and power, to kill what it had scotched, it set itself about, with a callous indifference to the spirit as well as the letter of the statute and the order, the task of not only more firmly seating the

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resent a majority of our clerical employees, and we will have no further dealing with them. We are satisfied can make amicable adjustment with Association of Clerical Employees Southern Pacific Lines, which does represent majority of clerical employees, and it is the opinion of our counsel, after careful consideration of the law, that there is nothing in the law or in our present situation which can or should prevent us from reaching agreement with organization last mentioned. The inference in your telegram that we can deal only with the Brotherhood seems to us and our counsel to be obstructive, rather than helpful." And thereafter its offices were ignored and its tender of continuing services of September 28 to A. D. McDonald, President, and of October 11 to H. M. Lull, Vice-President, were declined.

[19]Section 6 of the Act (45 U. S. C. A. § 156) provides: In any case where the services of the Board of Mediation had been requested by either party, or said board has proffered its services, rates of pay or rules or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act by the Board of Mediation.

[20]In Torian's affidavit, filed July 28, 1927, he said: "The Association of Clerical Employees claims to represent the majority of said employees under written authorizations from such majority. The officers of the Association have tendered to affiant, in his official capacity, written authorizations claimed to be held by the Association of a majority of said clerical employees, but affiant has declined to receive or act upon the same until a certain pending request made by the Brotherhood shall have been disposed of or dismissed by the Board of Mediation. When the said pending matter shall have been disposed of or dismissed by the United States Board of Mediation, it is the purpose of said affiant to consider the request."

Association of Clerical Employees, but of crushing any effort on the part of other employees to secure other representation, if they so desired, in the face of Torian's affidavit filed in the original hearing.[21]

"In short, upon a foundation laid in direct violation of the statute, they have sought to erect a superstructure of exclusive representation, and in the face of a statute and an injunction designed to secure the observance of the fundamental maxim, '*Audita alteram partem,*' they have gone about to arrange it so that the railroad would be in a position of surely having a vote on both sides of the table, its own side and that of its employees.[22]

"In view of all these facts, and of the further controlling and dominant fact that, in the face of the agreement and understanding that the Brotherhood should continue to represent the clerks until by secret ballot other representation was selected, it appears that organizers of the Association of Clerical Employees have been sent out, on company time, and on company pay, and with company consent and approval, to organize the Association, while officers of the Brotherhood have been discharged from the service and excluded from wage conferences, members of the Brotherhood have had their pay docked for the time spent on its business,

[21] "It is not a fact that, should a majority of the clerical employees of the railway company, other than those in general offices, elect to be represented by the Association, and should affiant and the railroad company deal with the Association, and not with the Brotherhood, the clerical employees now members of the Brotherhood will be forced to withdraw from membership therein, or that the Brotherhood will, of necessity, be dissolved."

[22] Letter of August 12, 1927:

"T. & N. O. Railroad Notice No. 551.

"Lafayette, La., Aug. 12, 1927.

"Passenger Conductor: If annual pass A25751, favor of H. W. Harper, timekeeper, residence, San Antonio, Texas, S. P. Lines, is presented, take up, collect full fare, and return to this office.

"[Signed] R. M. Clover, Superintendent."

The dropping of Harper from the rolls in September, and Walker in October, without notice or hearing to them. Notation on Harper's record: "Personal Record to September 24, 1927. Dropped from the roll, as he has performed no service since 1923."

and other members have been dismissed from the service,[23] it would be a sticking in the bark to discuss in detail the evidences with which this record teems of a deliberate violation of this injunction, legalistic, perhaps, through the advice of counsel, but none the less a violation.[24]

"In the view which I have taken that the authorizations on which the company acted were procured in violation of the law, it would serve no purpose to extend this opinion further by a discussion of the hypothesis whether, if lawfully obtained, they were sufficient in number. Entertaining that hypothesis, however, for a moment, I think it plain that there were not sufficient authorizations of those quali-

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[23]The answer of the railroad company, paragraph V, admits that the representatives of the railroad company did exclude Harper at the direction of Torian "because Harper was not wanted"; the Association of Clerical Employees being the sole recognized representative. The answer admits the discharge from service of Harper, the taking up of his pass (paragraphs X and XI), the dropping of Walker, the docking of pay of certain of the Brotherhood members, while making no deduction whatever from the pay of the officers of the Association of Clerical Employees (Answer, paragraph IX), the discharge of the individual employees Stallings, Hudson, and Ginsburg, upon, however, claimed legal grounds.

[24]The following testimony of Waid upon this matter is illuminating:

"Q. Isn't it a very unusual situation for the company to have men active like that, not doing any work, and still carrying them on the payroll? A. No; we frequently detach men from the service for the purpose of handling matters that are for the general good. For instance, we send men to an organization for fuel conservation each year.

"Q. I do not mean that; I mean in these employees organizations. Was there ever a case before where the railroad company kept a representative of the employees on the payroll, and allowed them to stay there without working? Not any case before? A. Oh, I presume there have been, where they were doing work that was worthy of consideration.

"Q. I know, but the work they are doing is not worthy of any consideration by the company is it—company work? A. Yes; it is very much in the interest of the company to secure a proper representative of interests; and I should think that the company would be very much interested in that.

"Q. So these men are really working for the company in organizing and promoting this Association? A. No; I would not say that they are so employed.

"Q. What do you say? A. They merely go, so far as I know—

"Q. What I mean, you said they were doing work which is greatly to the interest of the company in promoting and insuring friendly organizations; that is correct? A. Yes, that is correct. We feel so.

"Q. And you are maintaining them still on the payroll in order to enable them to do that? A. I have not said they are on the payroll.

"Q. I am asking you.

"Mr. Tallichet: If it will clarify the situation, I will say that I got the information, not from Mr. Waid, but Mr. Torian, that we have made no deductions whatever from the pay of these men."

fied to vote, to constitute a majority. But I think it further plain that, irrespective of the number and of the legality of their obtaining, it was never contemplated that representation of a class could be founded upon conglomerating into a ballot for an Association of Clerical Employees these heterogenous requests for higher pay.

"It is abundantly clear that the injunction issued to prevent such violation has been completely nullified, and that a remedial order should be entered, completely disestablishing the Association of Clerical Employees, as now constituted through the action of the defendant, as representative of their fellows, and re-establishing the Brotherhood as such representative, until by proper ballot the employees, without dictation or interference, vote otherwise, such order to further provide for the restoration to their positions and privileges of the officers of the Brotherhood, and the restoration without loss of those of the employees whose discharge, though nominally predicated upon a violation of the rules, was really grounded upon antipathy because of their action on behalf of the Brotherhood, and that the matters here involved should be referred to the proper law officers of the government, for them to determine whether a proceeding for criminal contempt in the name of the United States should be begun."

OPINION IV.

Opinion of District Court, on making permanent the temporary injunction, filed April 19, 1928, (Record pp. 395-401), reported in 25 Fed. (2nd) 873.

"The court having in this cause on July 29, 1927, issued a temporary injunction, and on February 11, 1928, a contempt order, defendants thereafter filed their motion to dissolve and vacate both. Thereafter, on March 12, 1928, the cause came on for final hearing on the merits at which time full evidence and arguments were presented and heard, and the matter now stands for disposition of the defendants' motions above and on the merits of plaintiffs' prayer for permanent injunction.

"On this hearing the evidence more abundantly even than on the previous hearings established a deliberate disregard and violation of the terms of the statute, and, after its issuance, of the temporary injunction, by the defendant company through a calculated and studied interference, both with the self-organization, and the designation of representatives by the employees.

"In addition, the genesis and motive of the entire activity of the defendants in organizing, promoting, and maintaining the association, and in endeavoring to disrupt and unseat the Brotherhood as representatives, is made clear and plain through a letter written by Mr. Lull, one of the defendants in the contempt proceeding and Vice-President of the railroad company, to Mr. McDonald, its President on May 24, 1927, prior to the activities complained of in this suit.

"That letter in brief declared that there was pending from the general committee of the national organization of the Brotherhood of Railway Clerks a request for an in-

crease of 10 cents per hour; that it was practically certain, if the matter went to arbitration, an award would be rendered increasing the pay roll $340,000 per annum; that he proposed to refuse arbitration upon the question of the right of the Brotherhood to represent the employees, and stated: 'This will permit us to get away from the interference of this organization, and if successful in this, I am satisfied we can make settlement with our own employees at a cost not to exceed $75,000 per annum[1].''

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[1]Houston, Texas, May 24, 1927.

Mr. A. D. McDonald, President, New York City, N. Y.

Dear Mr. McDonald: In the case of clerical and station service employees the general committee of the National Organization of the Brotherhood of Railway Clerks filed, on November 2, 1925, a request for increase of 10 cents per hour. The granting of this request would involve an increase payroll expense of, approximately $773,000, or about 20 per cent, for the classes of employees involved. Conferences were held with the committee, but no agreement could be reached, as we did not feel that there was any proper basis for the increase asked for. In January, 1926, the organization filed the case with the United States Railroad Labor Board, and it was pending before the Labor Board at the time the board was abolished by the Railway Labor Act.

Following the abolition of the Labor Board further conferences were held with the organization committee, but no agreement could be reached, and the organization has invoked the service of the United States Board of Mediation. In the recent arbitration case on the lines west of El Paso the arbitrators awarded large increases, the majority of the clerical employees being awarded an increase of 5 cents per hour.

As our average rates for clerks are considerably lower than those on the Pacific Lines, we could not expect any more favorable decision in case this matter went to arbitration, and to apply on the lines east of El Paso the award rendered in the Pacific Lines case would mean an increased payroll cost of approximately $340,000 per annum.

From the best information we are able to obtain, the majority of our clerical and station service employees do not belong to the national organization, and it is our intention, when handling the matter in mediation proceedings, to raise the question of the right of this organization to represent these employees, and, if arbitration is proposed, we shall decline to arbitrate on the basis that the petitioner does not represent the majority of the employees. This will permit us to get away from the interference of this organization and if successful in this, I am satisfied we can make settlement with our own employees at a cost not to exceed $75,000 per annum.

"One of our neighboring roads, the Kansas City Southern, recently had a similar situation and declined to go into arbitration with an organization that did not represent a majority of its employees. The question of going into arbitration on any and all requests that are presented by miscellaneous classes of employees has been discussed with the managers of a number of railroads in the Southwest, and it is the consensus of opinion that the lines should decline to arbitrate these matters, as there is no legal obligation to do so, and that these requests will continue to be presented in even greater numbers until the lines take a firm stand against arbitrating matters that should be settled in direct negotiation between the individual railroads and its employees.

Yours truly, [Signed] H. M. Lull.

"Every proceeding taken thereafter sprang from and may be read in the light of this program, which explains the vigorous and determined effort to seat the company union as the sole representative of the employees, and gives full color to the persistent efforts thereafter to destroy the influence and activity of the Brotherhood. It may therefore be affirmatively and easily found here that the fact findings made on the two preceding hearings before this court, that the defendant company was acting in direct and open disregard of the provisions of the statute, should be without hesitation reaffirmed.

[1-3] "The defendants say, however, that, conceding these findings to be correct, they furnish no basis for injunctive relief. They say the statute which they are disregarding is a mere congressional gesture, has not the force of law, confers no rights, imposes no penalties, provides no remedies, and that the case stands here as did the case of *Pennsylvania Federation* v. *Pennsylvania R. R. Co.*, 267 U. S. 204, 45 S. Ct. 307, 69 L. Ed. 574.

"They argue that the Supreme Court in that decision has determined the very question here, that it has construed a statute having equivalent terms with this as inoperative, and not enforceable by court decree, and that that decision controls this case. That they are in error as to the effect of that case I think entirely plain. What was decided there was that the decisions of the Labor Board could not be enforced by injunction; the court saying:

"'What the complainants here are seeking to do is to enforce by mandatory injunction a compliance with a decision of the Board, not based on the legal rights of the parties, but on its judgment as to what legal rights the disputants should surrender or abate in the public interest. Such remedy by injunction in a court it was not the intention of Congress to provide.'

"What the complainants are seeking here to enforce is the century-old right of representation, a right granted to the employees by Congress in mandatory language, that they should select their own representatives without interference by the Railroad Company. This and nothing more is here attempted, and I think it plain that the question is res integra and has never been before adjudicated, except in the preliminary opinion in this case.[2]

"So viewing it, I believe that in such a case as made here, from the maxim '*ubi jus, ibi remedium*' springs the equitable power in this court to protect this most reasonable right granted by Congress from invasion. The passage of this Act (44 Stat. 577 [45 U. S. C. A. §§ 151-163]) followed the decision in 267 U. S., *supra*, and in it Congress made effective as law principles which in *Pennsylvania R. Co.* v. *Labor Board*, 261 U. S. 72, 43 S. Ct. 278, 67 L. Ed. 536, the Supreme Court had approved as sound, but in 267 U. S. had declared unenforceable as law, because not expressed in Acts of Congress, but merely in decisions of the Labor Board.

"It is the duty of this court, wherever possible, to hold Acts of Congress virile rather than sterile, constitutional, rather than unconstitutional, and, where a right is claimed under an Act of Congress, to give it effective protection, especially where those who contest this right to do so on arbitrary or interested grounds. I recognize that the case in its legal aspects is not without difficulty, but, feeling that that difficulty arises, not out of any weakness in the underlying principle here invoked, that where Congress has granted a right the court may protect that right by its injunction, but out of the doubt raised by defendants as to whether Congress has merely stated a correct principle, without establishing it as a right, that doubt I believe it my duty to resolve in favor of congressional virility.

[2]Opinion, Brotherhood of Railway Clerks v. Texas & N. O. R. R. Co., 34 F. (2d) 426.

"Upon the other point presented by counsel, that the statute, if operative, is unconstitutional, I have no difficulty at all. Reason and authority alike declare and approve the existence of such legislative power in Congress, and I am satisfied to rest the matter on the opinion heretofore rendered in this cause[3].

[4] "Nor is the suggestion that the Clayton Act (38 Stat. 730) prevents this injunction of any force, if the assumption on which I have proceeded, that Congress, in view of the established custom of collective bargaining which has existed for many years, has conferred a right on the employee in interstate commerce that he shall be truly represented by those who bargain for him, is sound. It is just as much a property right of an employee to work in interstate commerce under a guarantee granted to him by Congress, that his wages and working conditions shall not be fixed for him without representation, as it is for an employer to have the right to continue operations in interstate commerce protected from activities of persons who would seek to prevent that operation, by inducing persons not to work for them. Both rights are imponderable and intangible, but neither less real and substantial than the other.

"Finding no reason to believe that there was error in the granting of the preliminary injunction, and believing that that injunction should be made permanent, the motion of defendants to dissolve the temporary injunction will be denied, and a decree will be approved, making it perpetual."

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[3]See Opinion, Brotherhood of Railway and Steamship Clerks, et al v. Texas & New Orleans R. R. Co. et al. (D. C.), 24 F. (2d) 426.

OPINION V.

Opinion of District Court, on denying motion to vacate contempt order, filed April 19, 1928, (Record pp. 388-394), reported in 25 Fed. (2d) 876.

"This is a motion to vacate or modify a contempt order entered in this court on February 11, 1928, upon the grounds and for the reasons set out in the report of this cause in 24 F. (2d) 426.

"Defendants contend: (1) That the injunction was improvidently granted. (2) That the defendants did not violate the injunction. (3) That the contempt order exceeded the power and jurisdiction of this court.

"The first point, in connection with the trial on the merits, I have considered and disposed of adversely to defendants by making a temporary injunction heretofore issued permanent. See opinion, *Brotherhood of Railway and Steamshop Clerks, etc., et al.* v. *Texas & N. O. R. R. Co., et al.* (D. C.) 25 F. (2d) 873.

[1] "The second point, that the injunction was not violated, I think wholly untenable. It seems to be rested by counsel upon an entire misapprehension of the terms of the statute, and a failure to appreciate its effect and scope as a continuing obligation. Its corrective force may not be defeated by an act or series of acts. If it has any virtue, it protects an employee in his right to self-organization, and the selection of his representatives always. There never comes a time under that statute when the defendant perfects the right to force upon employees any representative of their choosing, whereas here the record teems with evidences not only of contracts between the railroad company and the Association for sole representation, but of continuing acts on the part of the company designed and tending

to disrupt, disintegrate, and destroy the Brotherhood, while establishing in the seats of the mighty the Association.

"One of the Association's chairmen, all of whom are chief clerks to the management, testified that the growth of the Association had been due to its recognition by the railroad and the refusal to recognize the Brotherhood, and he naively remarked that if this suit went in favor of the company, the Association would be able to take complete control, whereas, if it went the other way, the Association would fall; while others testified that, if left to a vote uninfluenced by the company the employees would not select the Association as representative, while all the other testimony established the continuing character of the interference by the defendant company, in the support and maintenance of the company union for its benefit and advantage and the barring out of any and all other representation.

"While I think the continuing character of the obligation not to interfere which the statute imposes on the company completely refutes defendants' position, and that this is so plain as not to admit of argument, upon the further ground that the matter was not a *fait accompli* when the injunction was issued, but had only begun, and that the effective interference with self-organization and the designation of representatives which really made itself felt occurred after the injunction was issued, this contention must be denied. See *Texas & New Orleans R. R.* v. *North Side Railway*, 48 S. Ct. 361, 72 L. Ed.—(April 9, 1928.)

[2, 3] As to the defendants' complaint that the contempt order has gone further than the injunction, and that the court has thereby assumed a jurisdiction beyond the terms of the statute, I think it sufficient to say that the contempt order has done nothing more than in the recognized jurisdiction of the court, to restore the *status quo ante*, except in one particular which will be later noted. So clear

is this power to restore the status that it has even been held that where a defendant with notice of filing of a bill of injunction proceeds to complete the act sought to be enjoined, the court may, by mandatory injunction, compel the restoration of the *status quo*. *Texas & New Orleans R. R.* v. *North Side Belt R'y*, 48 S. Ct. 361, 72 L. Ed.——, April 9, 1928.

"In directing the railroad to disestablish the Association of Clerical Employees as it is now constituted as the recognized representative of the clerical employees of the railroad company, the court merely restored the status which existed at the time of the granting of the injunction, at which time this Association was in the process of formation, its representative character had not been established, and since that Association had been formed and promoted by the interference of the defendant company, and its recognition brought about as the effective act in such interference in violation of the injunction, the court properly directed the railroad company not to recognize it as representative as presently constituted and established, leaving open to the employees the right by secret ballot, or by any other way they desire, uninfluenced by dictation or interference by the defendant company, to select the Association, if they chose, as their representative.

"As to the restoration of Harper, Walker, Stotzer, Hudson, and Ginsburg, this also was merely an Act of restoration of status, commanded in order to wipe out the effects and results of disobedience. Nothing in the order attempted to, nor could it, fix any time or conditions to the continuing in place of these persons. It merely declared that the severance of these relations and the disturbance of the *status quo* as to them, which the court found from the evidence had been brought about through a deliberate violation of the injunction order of the court, must be undone, and inferentially that it should not occur again for the same or similar reasons.

[4] The particular in which the contempt order is perhaps subject to criticism, and should be modified, is that part of it which, after restoring the Brotherhood to their undoubted *status quo* as representative of the employees, established both by contract of the company with them and the undisputed proof, undertook to limit to the taking of a secret ballot the processes under which this *status quo* could be changed. This limitation was drawn, not only from the established practice and ruling of the Labor Board, but from the letter of the railroad company through Torian, its representative, dated November 14, 1923, and thereafter acted upon:

"'In conference yesterday I advised that the carrier would comply with decision 1971 of the United States Labor Board, and recognize the organization of the Brotherhood of Railway and Steamship Clerks until such time as the majority of the clerical employees by secret ballot, select other representation.'

"In view, however, of the statement by defendants during the trial of this case of that understanding, and the position taken by them that they do not believe that a secret ballot is a fair method of determining representation, I believe that that provision in the contempt decree, No. 3 thereof, should be modified by adding after 'secret ballot,' or in any other manner decided by themselves, so that that provision of the contempt order will hereafter read: 'Reinstating and re-establishing the said Brotherhood as the representative of the clerical employees in all matters relating to their employment by the said railroad company, disputes as to pay, working conditions, etc., substantially as said status was on June 1, 1927, until such time as said clerical employees by a secret ballot taken in accordance with the further directions of this court, or by any other means of selection which the employees themselves may decide upon and adopt, and without the dictation or inter-

ference of the said Texas & New Orleans Railroad Company, H. M. Lull, G. S. Waid, or J. G. Torian, shall choose another representative or representatives.'

"As so modified, nothing in the order of February 11 in the slightest manner interferes with or prevents the lawful management and operation of the railroad by the defendant company. Nothing interferes with or prevents the employment or discharge of its employees, in the legal and proper course of its business. Nothing in the decree requires the railroad company to recognize the Brotherhood any longer than such time as its employees, or some of them, in the exercise of the right granted them by the Act, shall see fit to have the Brotherhood represent them, with the full right in the employees, or any amount of them, either by secret ballot under the direction of the court, or in any manner which they may determine, to select another or other representative.

"The status restored was disturbed by the railroad company, in violation of the law and of the injunction. From disturbing this status the railroad was and is expressly enjoined by the statute and the order of this court. The employees, however, not only have the right, but the right is expressly recognized in them, to appoint and establish any representative or representatives they may choose, the Association, or any other, so long as, and provided only, that the railroad takes no part or parcel in this selection.

"If the company has the right under the law to compel the employees to deal with it through an association organized, promoted, fostered, and maintained by the defendant company, as the Supreme Court held, under the law then existing, the Pennsylvania Railroad had the right to do, then, of course, the injunction issued by this court ought not to have been issued, and, being issued, ought to be set aside. But, if the employees have the right, which the stat-

utes here say they have, to freedom in the matter of self-organization and the selection of representatives from interference, influence, or coercion on the part of the defendant company, then the injunction has done no more than to insist upon that right, and the contempt order no more than to make that injunction effective.

"From these views, it follows that the request to modify the contempt order in the matter of making a secret ballot the exclusive means of determining representation is granted, and that the contempt order, as so modified by the insertion of the additional means for the selection of representatives, as hereinabove set out, is affirmed and continued in full force, and the motion to vacate and dissolve it is denied."

Railway Labor Act of 1926.

[PUBLIC—No. 257—69TH CONGRESS]
[H. R. 9463]

An Act To provide for the prompt disposition of disputes between carriers and their employees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act:

First. The term "carrier" includes any express company, sleeping-car company, and any carrier by railroad, subject to the Interstate Commerce Act, including all floating equipment such as boats, barges, tugs, bridges and ferries; and other transportation facilities used by or operated in connection with any such carrier by railroad, and any receiver or any other individual or body, judicial or otherwise, when in the possession of the business of employers or carriers covered by this Act: *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway unless such a railway is operating as a part of a general steam railroad system of transportation, but shall not exclude any part of the general steam railroad system of transportation now or hereafter operated by any other motive power;

Second. The term "Adjustment Board" means one of the boards of adjustment provided for in this Act;

Third. The term "Board of Mediation" means the Board of Mediation created by this Act;

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the commission.

Sixth. The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the Railway Labor Act.

GENERAL DUTIES

SEC. 2. First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

Fourth. In case of a dispute between a carrier and its employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the railroad line of the carrier involved unless otherwise mutually agreed upon; and (2) that the time so specified shall allow

the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this paragraph shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Fifth. Disputes concerning changes in rates of pay, rules, or working conditions shall be dealt with as provided in section 6 and in other provisions of this Act relating thereto.

BOARDS OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

SEC. 3. First. Boards of adjustment shall be created by agreement between any carrier or group of carriers, or the carriers as a whole, and its or their employees.

The agreement—

(a) Shall be in writing;

(b) Shall state the group or groups of employees covered by such adjustment board;

(c) Shall provide that disputes between an employee or group of employees and a carrier, growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, that the dispute shall be referred to the designated adjustment board by the parties, or by either party, with a full statement of the facts and all supporting data bearing upon the dispute;

(d) Shall provide that the parties may be heard either in person, by counsel, or by other representative, as they

may respectively elect, and that adjustment boards shall hear and, if possible, decide promptly all disputes referred to them as provided in paragraph (c). Adjustment boards shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in the dispute;

(e) Shall stipulate that decisions of adjustment boards shall be final and binding on both parties to the dispute; and it shall be the duty of both to abide by such decisions;

(f) Shall state the number of representatives of the employees and the number of representatives of the carrier or carriers on the adjustment board, which number of representatives, respectively, shall be equal;

(g) Shall provide for the method of selecting members and filling vacancies;

(h) Shall provide for the portion of expenses to be assumed by the respective parties;

(i) Shall stipulate that a majority of the adjustment board members shall be competent to make an award, unless otherwise mutually agreed;

(j) Shall stipulate that adjustment boards shall meet regularly at such times and places as designated; and

(k) Shall provide for the method of advising the employees and carrier or carriers of the decisions of the board.

Second. Nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the statement of disputes through such machinery of contract and adjustment as they may mutually establish.

BOARD OF MEDIATION.

SEC. 4. First. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the Board of Mediation and to be composed of five members appointed by the President, by and with the advice and consent of the Senate. The terms of office of the members first taking office shall expire, as designated by the President at the time of nomination, one at the end of the first year, one at the end of the second year, one at the end of the third year, one at the end of the fourth year, and one at the end of the fifth year, after January 1, 1926. The terms of office of all successors shall expire five years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the board shall not impair the powers nor affect the duties of the board nor of the remaining members of the board. A majority of the members in office shall constitute a quorum for the transaction of the business of the board. Each member of the board shall receive a salary at the rate of $12,000 per annum, together with necessary traveling expenses and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the board.

A member of the board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. The board shall annually designate a member to act as chairman. The board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary. The board may designate one or more of its members to exercise the functions of the board in mediation proceedings. Each member of the board shall have power to administer oaths and affirmations. The board shall have a seal which shall be judicially noticed. The board shall make an annual report to Congress.

Third. The board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil service laws, such other officers and employees, and (2) in accordance with the Classification Act of 1923 fix the salary of such experts, assistants, officers and employees, and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of boards of arbitration, in accordance with the provisions of section 7) as may be necessary for the execution of the functions vested in the board, or in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

FUNCTIONS OF BOARD OF MEDIATION

SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Board of Mediation created

by this Act, or the Board of Mediation may proffer its services, in any of the following cases:

(a) A dispute arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions not adjusted by the parties in conference and not decided by the appropriate adjustment board;

(b) A dispute which is not settled in conference between the parties, in respect to changes in rates of pay, rules, or working conditions;

(c) Any other dispute not decided in conference between the parties.

In either event the said board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable adjustment through mediation shall be unsuccessful, the said board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act), to induce the parties to submit their controversy to arbitration in accordance with the provisions of this Act.

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Board of Mediation for an interpretation as to the meaning or application of such agreement. The said board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

Third. The Board of Mediation shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Board of Mediation to name such remaining arbitrator or arbitrators. It shall be the duty of the board in naming such arbitrator or arbitrators to appoint only those whom the board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the board shall promptly remove such arbitrator.

If an arbitrator named by the Board of Mediation, in accordance with the provisions of this Act, shall be removed by such board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Board of Mediation, promptly, to select another arbitrator, in the same manner as provided in this Act for an original appointment by the Board of Mediation.

(b) Any member of the Board of Mediation is authorized to take the acknowledgment of an agreement of arbitration under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said board, or transmitted to said board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Board of Mediation, or with one of its members, as provided by this section, and when the said board, or a member thereof, has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board of Mediation to cause a notice in

writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the board of arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Board of Mediation in writing, stating in such notice the question or questions to be submitted to such reconvened board. The Board of Mediation shall thereupon promptly communicate with the members of the board of arbitration, or a subcommittee of such board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said board or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original board is unable or unwilling to serve on such reconvened board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) The Interstate Commerce Commission, the Bureau of Labor Statistics, and the custodian of the records, respectively, of the Railroad Labor Board, of the mediators designated in the Act approved June 1, 1898, providing for mediation and arbitration, known as the Erdman Act,

and of the Board of Mediation and Conciliation created by the Act, approved July 15, 1913, providing for mediation, conciliation, and arbitration, known as the Newlands Act, are hereby authorized and directed to transfer and deliver to the Board of Mediation created by this Act any and all papers and documents heretofore filed with or transferred to them, respectively, bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect to such disputes; and the President is authorized to require the transfer and delivery to the Board of Mediation, created by this Act, of any and all such papers and documents filed with or in the possession of any agency of the Government. The President is authorized to designate a custodian of the records and property of the Railroad Labor Board, until the transfer and delivery of such records to the Board of Mediation and the disposition of such property in such manner as the President may direct.

PROCEDURE IN CHANGING RATES OF PAY, RULES, AND WORKING CONDITIONS.

SEC. 6. Carriers and the representatives of the employees shall give at least thirty days' written notice of an intended change affecting rates of pay, rules, or working conditions, and the time and place for conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. Should changes be requested from more than one class or associated classes at approximately the same time, this date for the conference shall be understood to apply only to the first conference for each class; it being the intent that subsequent confer-

ences in respect to each request shall be held in the order of its receipt and shall follow each other with reasonable promptness. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Board of Mediation have been requested by either party, or said board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 5 of this Act, by the Board of Mediation, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Board of Mediation,

ARBITRATION.

SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy, may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select

a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Board of Mediation.

(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Board of Mediation.

Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Board of Mediation; and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the Board of Mediation of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Upon notice from the Board of Mediation that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose

pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Board of Mediation, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Board of Mediation shall receive from the Board of Mediation such compensation as the Board of Mediation may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The

said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Board of Mediation, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) A board of arbitration may, subject to the approval of the Board of Mediation, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Board of Mediation.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to

issue such subpoenas. In the event of the failure of any person to comply with any such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements and documents to the same extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

SEC. 8. The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this Act;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Board of Mediation, and, when so acknowledged, shall be filed in the office of the Board of Mediation;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitra-

tion may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and biding award:

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommit-

tee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however,* That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Board of Mediation or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

SEC. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however,* That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further,* That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however,* That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in acordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appel-

late court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

EMERGENCY BOARD

SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Board of Mediation, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Board of Mediation shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecu-

nearly or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

GENERAL PROVISIONS

SEC. 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 12. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Board of Mediation in carrying out the provisions of this Act.

SEC. 13. (a) Paragraph "Second" of subdivision (b) of section 128 of the Judicial Code, as amended, is amended to read as follows:

"Second. To review decisions of the district courts, under section 9 of the Railway Labor Act."

(b) Section 2 of the Act entitled "An Act to amend the Judicial Code, and to further define the jurisdiction of the circuit court of appeals and of the Supreme Court, and for other purposes," approved February 13, 1925, is amended to read as follows:

"SEC. 2. That cases in a circuit court of appeals under section 9 of the Railway Labor Act; under section 5 of 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914; and under section 11 of 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, are included among the cases to which sections 239 and 240 of the Judicial Code shall apply."

SEC. 14. Title III of the Transportation Act, 1920, and the Act approved July 15, 1913, providing for mediation, conciliation, and arbitration, and all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office upon the date of the passage of this Act, shall receive their salaries for a period of 30 days from such date, in the same manner as though this Act had not been passed.

Approved, May 20, 1926.